

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY
NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

FILED BY CLERK

MAY -7 2008

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,

Appellee,

v.

ANDREW MICHAEL PERALTA,

Appellant.

2 CA-CR 2007-0067

DEPARTMENT B

MEMORANDUM DECISION

Not for Publication

Rule 111, Rules of
the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF GILA COUNTY

Cause No. CR20060270

Honorable Peter J. DeNinno, Judge Pro Tempore

AFFIRMED

Terry Goddard, Arizona Attorney General
By Randall M. Howe and Julia A. Done

Phoenix
Attorneys for Appellee

Emily Danies

Tucson
Attorney for Appellant

E S P I N O S A, Judge.

¶1 After a bench trial, appellant Andrew Peralta was convicted of an amended charge of possession of drug paraphernalia, a class one misdemeanor, and placed on

probation for six months.¹ On appeal, he challenges the trial court's denial of his motion for judgment of acquittal pursuant to Rule 20, Ariz. R. Crim. P., claiming there was insufficient evidence to support the conviction. He also challenges the court's denial of his motion for new trial, which was based on his contention that the verdict was contrary to the weight of the evidence. We affirm for the reasons stated below.

Facts

¶2 When reviewing questions of sufficiency of evidence, we view that evidence in the "light most favorable to supporting the verdict." *State v. Sullivan*, 187 Ariz. 599, 603, 931 P.2d 1109, 1113 (App. 1996). In January 2006, City of Globe police officers Boyd and Moore were patrolling near a local park when they saw two vehicles in the park after regular hours, parked door to door, and facing opposite directions. Boyd approached the vehicles and asked the driver of the truck for identification, noticing the driver's door was slightly ajar. While the driver, Peralta, handed the officer his identification, Boyd heard the sound of an object rolling and hitting the ground next to Peralta's door. Boyd shined his light on the ground and saw the object was a glass pipe, which he seized.

¶3 Peralta denied the pipe was his but admitted he was a methamphetamine user and had been in a drug rehabilitation program until recently. He told Boyd he had relapsed three days earlier. Boyd noticed Peralta was sweating profusely, even though it was a cold January night, and knew sweating could be associated with recent methamphetamine use.

¹Peralta was on probation for a previous aggravated assault conviction at the time he was charged with and convicted of the current offense. His conviction for possession of drug paraphernalia was treated as a violation of his probation.

Peralta and the person in the other vehicle, Anthony Pena, were both arrested. Pena had a “bindle” of methamphetamine in his hand, as well as marijuana and drug paraphernalia in his vehicle, including syringes, a pipe, and cigarette rolling papers.

¶4 Subsequent testing revealed that fingerprints on the glass pipe did not match either Peralta or Pena. The pipe had methamphetamine residue in one end; the other end had been twisted off. Boyd testified he had thought the pipe “look[ed] operational.” In denying Peralta’s motion for new trial, the court observed: “It was a pipe that obviously had been used for smoking drugs.”

Discussion

¶5 As previously noted, in reviewing the denial of motions challenging the sufficiency of the evidence, we view the facts in the light most favorable to sustaining the verdict; and, will affirm the convictions unless there was no substantial evidence to support them. *See State v. Pena*, 209 Ariz. 503, ¶ 7, 104 P.3d 873, 875 (App. 2005); *Sullivan*, 187 Ariz. at 603, 931 P.2d at 1113. Substantial evidence is that which “reasonable persons could accept as sufficient to support a guilty verdict beyond a reasonable doubt.” *State v. Hughes*, 189 Ariz. 62, 73, 938 P.2d 457, 468 (1997). The substantial evidence required to support a verdict may be direct or circumstantial. *Pena*, 209 Ariz. 503, ¶ 7, 104 P.3d at 875. “The sufficiency of the evidence must be tested against the statutorily required elements of the offense.” *Id.* ¶ 8.

¶6 Peralta contends the evidence did not establish the pipe was usable and that, consequently, the evidence was insufficient to support his conviction. Section 13-3415,

A.R.S., describes the offense of possession of drug paraphernalia and provides in subsection A as follows:

It is unlawful for any person to use, or to possess with intent to use, drug paraphernalia to plant, propagate, . . . inject, ingest, inhale or otherwise introduce into the human body a drug in violation of this chapter. Any person who violates this subsection is guilty of a class 6 felony.

Drug paraphernalia is defined as “all equipment, products and materials of any kind which are used, *intended for use or designed for use* in planting, propagating, . . . injecting, inhaling or otherwise introducing into the human body a drug.” § 13-3415(F)(2) (emphasis added). Pipes, including glass pipes, are among the items specifically listed as drug paraphernalia. *See* § 13-3415(F)(2)(1)(i).

¶7 Peralta points out that his fingerprints were not found on the pipe and neither Boyd nor Moore saw the pipe being used or could “positively” say it was in useable condition. Accordingly, he argues, there was no evidence the pipe was functional or “actually useable,” and therefore the evidence was insufficient to support his conviction under § 13-3415. “Usability,” however, is not one of the elements for possession of drug paraphernalia. The statute only specifies that the equipment be “intended for use or designed for use” of an illegal substance. § 13-3415(F)(2).

¶8 There was ample circumstantial evidence establishing the pipe had, in fact, been used for methamphetamine ingestion. Boyd testified the pipe had been tested and found to contain methamphetamine residue. He also stated the pipe had fallen out of Peralta’s truck as Boyd approached him. And, Peralta was meeting Pena in a clandestine location while

Pena was holding methamphetamine in his hands. Peralta admitted he was addicted to methamphetamine and had been undergoing drug rehabilitation treatment but had relapsed only three days earlier. Boyd also testified Peralta exhibited physical signs of recent methamphetamine use. Thus, there was sufficient evidence from which a reasonable factfinder could conclude beyond a reasonable doubt that the pipe was “intended for use or designed for use” of methamphetamine, § 13-3415(F)(2), and that Peralta had possessed drug paraphernalia in violation of § 13-3415. *See Hughes*, 189 Ariz. at 73, 938 P.2d at 468. The trial court did not err in denying Peralta’s Rule 20 motion and the related motion for new trial.

¶9 Peralta’s conviction and probationary term are affirmed.

PHILIP G. ESPINOSA, Judge

CONCURRING:

PETER J. ECKERSTROM, Presiding Judge

GARYE L. VÁSQUEZ, Judge